

ASSEMBLY BILL

No. 408

Introduced by Assembly Member Steinberg

February 14, 2003

An act to amend Sections 349, 358.1, 366, 366.1, 366.21, 366.22, 366.26, 366.3, 16500.1, and 16508 of, and to add Section 362.05 to, the Welfare and Institutions Code, relating to dependent children.

LEGISLATIVE COUNSEL'S DIGEST

AB 408, as introduced, Steinberg. Dependent children.

Existing law provides that children may become dependent children of the juvenile court on the basis of abuse or neglect. Existing law requires social workers and other, specified persons or agencies to prepare social studies, reports, evaluations, assessments, and supplemental reports for the juvenile court containing specified information regarding children who are, or who may become, dependent children of the juvenile court. Existing law also requires county welfare departments to provide or arrange for permanent placement services for children who cannot safely live with their parents and are not likely to return to their own homes.

Existing law requires the court to review the status of every child in foster care at least every 6 months and to determine specified facts concerning the child. Existing law also authorizes the court to terminate parental rights in certain cases. Existing law also requires social workers and the clerk of the court to send notice of hearings in the juvenile court concerning a child who is or who may become a dependent child of the court to that child if he or she is 10 years of age or older.

The bill would require that the social studies, reports, evaluations and assessments, and the case plans for permanent placement services, described above include information regarding the child's relationship to individuals who are important to the child, and actions necessary to maintain those relationships. The bill would require that certain assessments include a description of efforts to be made to identify an adoptive family. The bill would require social workers and certain agencies, as specified, to conduct an investigation to identify those persons and to make efforts to maintain those relationships. If a court orders a hearing to terminate parental rights, the bill would require the court to make any appropriate order necessary to maintain those relationships. The bill would require social workers and those agencies to ask every child who is 10 years of age or older to identify those persons. The bill would also authorize them to ask any child who is younger than 10 years of age to identify those persons. By imposing new duties on local employees, the bill would create a state-mandated local program.

The bill would require that the notice of a hearing in the juvenile court that is sent to a child who is 10 years of age or older state that the child has the right to attend the hearing. The bill would also require the court to determine whether a minor who is 10 years of age or older and who is not present at the hearing was properly notified of his or her right to attend the hearing.

Existing law encourages the development of approaches to child protection to achieve certain goals, including the goal of ensuring that children leaving the foster care system have support within their communities.

This bill would additionally require the state to encourage the development of approaches to child protection that ensure that no child leaves foster care without a lifelong connection to a committed adult. The bill would provide that every dependent child shall be entitled to participate in age appropriate extracurricular, enrichment, and social activities and that state regulations and policies may not prevent or create barriers to participation in those activities.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide



and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 349 of the Welfare and Institutions
2 Code is amended to read:

3 349. A minor who is the subject of a juvenile court hearing
4 and any person entitled to notice of the hearing under the
5 provisions of ~~Section 335~~ Sections 290.1 and 290.2, is entitled to
6 be present at ~~such~~ the hearing. ~~Any such~~ The minor and any ~~such~~
7 person ~~who is entitled to that notice~~ has the right to be represented
8 at ~~such~~ the hearing by counsel of his or her own choice. *If the*
9 *minor is 10 years of age or older and he or she is not present at the*
10 *hearing, the court shall determine whether the minor was properly*
11 *notified of his or her right to attend the hearing.*

12 SEC. 2. Section 358.1 of the Welfare and Institutions Code is
13 amended to read:

14 358.1. Each social study or evaluation made by a social
15 worker or child advocate appointed by the court, required to be
16 received in evidence pursuant to Section 358, shall include, but not
17 be limited to, a factual discussion of each of the following subjects:

18 (a) Whether the county welfare department or social worker
19 has considered child protective services, as defined in Chapter 5
20 (commencing with Section 16500) of Part 4 of Division 9, as a
21 possible solution to the problems at hand, and has offered these
22 services to qualified parents if appropriate under the
23 circumstances.

24 (b) What plan, if any, for return of the child to his or her parents
25 and for achieving legal permanence for the child if efforts to
26 reunify fail, is recommended to the court by the county welfare
27 department or probation officer.

28 (c) Whether the best interests of the child will be served by
29 granting reasonable visitation rights with the child to his or her

1 grandparents, in order to maintain and strengthen the child's
2 family relationships.

3 (d) (1) Whether the child has siblings under the court's
4 jurisdiction, and, if any siblings exist, all of the following:

5 (A) The nature of the relationship between the child and his or
6 her siblings.

7 (B) The appropriateness of developing or maintaining the
8 sibling relationships pursuant to Section 16002.

9 (C) If the siblings are not placed together in the same home,
10 why the siblings are not placed together and what efforts are being
11 made to place the siblings together, or why those efforts are not
12 appropriate.

13 (D) If the siblings are not placed together, the frequency and
14 nature of the visits between siblings.

15 (E) The impact of the sibling relationships on the child's
16 placement and planning for legal permanence.

17 (2) The factual discussion shall include a discussion of
18 indicators of the nature of the child's sibling relationships,
19 including, but not limited to, whether the siblings were raised
20 together in the same home, whether the siblings have shared
21 significant common experiences or have existing close and strong
22 bonds, whether either sibling expresses a desire to visit or live with
23 his or her sibling, as applicable, and whether ongoing contact is in
24 the child's best emotional interest.

25 (3) *A description of the relationships between the child and*
26 *individuals other than the child's siblings who are important to the*
27 *child and actions taken to maintain those relationships.*

28 (e) *The social worker or child advocate shall conduct an*
29 *investigation to identify individuals who are important to the child,*
30 *including, but not limited to, all individuals identified by the child*
31 *as important. The social worker or child advocate shall ask every*
32 *child who is 10 years of age or older to identify any individuals who*
33 *are important to him or her and may ask any child who is younger*
34 *than 10 years of age to provide that information, as appropriate.*

35 (f) If the parent or guardian is unwilling or unable to participate
36 in making an educational decision for his or her child, or if other
37 circumstances exist that compromise the ability of the parent or
38 guardian to make educational decisions for the child, the county
39 welfare department or social worker shall consider whether the
40 right of the parent or guardian to make educational decisions for



1 the child should be limited. If the study or evaluation makes that
2 recommendation, it shall identify whether there is a responsible
3 adult available to make educational decisions for the child
4 pursuant to Section 361.

5 ~~(f)~~

6 (g) Whether the child appears to be a person who is eligible to
7 be considered for further court action to free the child from
8 parental custody and control.

9 ~~(g)~~

10 (h) Whether the parent has been advised of his or her option to
11 participate in adoption planning, including the option to enter into
12 a postadoption contact agreement as described in Section 8714.7
13 of the Family Code, and to voluntarily relinquish the child for
14 adoption if an adoption agency is willing to accept the
15 relinquishment.

16 ~~(h)~~

17 (i) The appropriateness of any relative placement pursuant to
18 Section 361.3; however, this consideration may not be cause for
19 continuance of the dispositional hearing.

20 SEC. 3. Section 362.05 is added to the Welfare and
21 Institutions Code, to read:

22 362.05. Every child adjudged a dependent child of the
23 juvenile court shall be entitled to participate in age appropriate
24 extracurricular, enrichment, and social activities. No state
25 regulation or policy may prevent or create barriers to participation
26 in those activities. Caregivers shall use a prudent parent standard
27 in determining whether to give permission for a child residing in
28 foster care to participate in extracurricular, enrichment, and social
29 activities. The caretaker shall take reasonable steps to determine
30 the appropriateness of the activity in consideration of the child's
31 age, maturity, and developmental level.

32 SEC. 4. Section 366 of the Welfare and Institutions Code is
33 amended to read:

34 366. (a) (1) The status of every dependent child in foster
35 care shall be reviewed periodically as determined by the court but
36 no less frequently than once every six months, as calculated from
37 the date of the original dispositional hearing, until the hearing
38 described in Section 366.26 is completed. The court shall consider
39 the safety of the child and shall determine all of the following:

1 (A) The continuing necessity for and appropriateness of the
2 placement.

3 (B) The extent of the agency's compliance with the case plan
4 in making reasonable efforts to return the child to a safe home and
5 to complete any steps necessary to finalize the permanent
6 placement of the child, *including efforts to maintain relationships*
7 *between the child and individuals who are important to the child.*

8 (C) Whether there should be any limitation on the right of the
9 parent or guardian to make educational decisions for the child.
10 That limitation shall be specifically addressed in the court order
11 and may not exceed those necessary to protect the child. Whenever
12 the court specifically limits the right of the parent or guardian to
13 make educational decisions for the child, the court shall at the same
14 time appoint a responsible adult to make educational decisions for
15 the child pursuant to Section 361.

16 (D) (i) Whether the child has other siblings under the court's
17 jurisdiction, and, if any siblings exist, all of the following:

18 (I) The nature of the relationship between the child and his or
19 her siblings.

20 (II) The appropriateness of developing or maintaining the
21 sibling relationships pursuant to Section 16002.

22 (III) If the siblings are not placed together in the same home,
23 why the siblings are not placed together and what efforts are being
24 made to place the siblings together, or why those efforts are not
25 appropriate.

26 (IV) If the siblings are not placed together, the frequency and
27 nature of the visits between siblings.

28 (V) The impact of the sibling relationships on the child's
29 placement and planning for legal permanence.

30 (VI) The continuing need to suspend sibling interaction, if
31 applicable, pursuant to subdivision (c) of Section 16002.

32 (ii) The factors the court may consider in making a
33 determination regarding the nature of the child's sibling
34 relationships may include, but are not limited to, whether the
35 siblings were raised together in the same home, whether the
36 siblings have shared significant common experiences or have
37 existing close and strong bonds, whether either sibling expresses
38 a desire to visit or live with his or her sibling, as applicable, and
39 whether ongoing contact is in the child's best emotional interests.



1 (E) The extent of progress which has been made toward
2 alleviating or mitigating the causes necessitating placement in
3 foster care.

4 (2) The court shall project a likely date by which the child may
5 be returned to and safely maintained in the home or placed for
6 adoption, legal guardianship, or in another planned permanent
7 living arrangement.

8 (b) Subsequent to the hearing, periodic reviews of each child
9 in foster care shall be conducted pursuant to the requirements of
10 Sections 366.3 and 16503.

11 (c) If the child has been placed out of state, each review
12 described in subdivision (a) and any reviews conducted pursuant
13 to Sections 366.3 and 16503 shall also address whether the
14 out-of-state placement continues to be the most appropriate
15 placement selection and in the best interests of the child.

16 (d) A child may not be placed in an out-of-state group home,
17 or remain in an out-of-state group home, unless the group home is
18 in compliance with Section 7911.1 of the Family Code.

19 SEC. 5. Section 366.1 of the Welfare and Institutions Code is
20 amended to read:

21 366.1. Each supplemental report required to be filed pursuant
22 to Section 366 shall include, but not be limited to, a factual
23 discussion of each of the following subjects:

24 (a) Whether the county welfare department social worker has
25 considered child protective services, as defined in Chapter 5
26 (commencing with Section 16500) of Part 4 of Division 9, as a
27 possible solution to the problems at hand, and has offered those
28 services to qualified parents if appropriate under the
29 circumstances.

30 (b) What plan, if any, for the return and maintenance of the
31 child in a safe home is recommended to the court by the county
32 welfare department social worker.

33 (c) Whether the subject child appears to be a person who is
34 eligible to be considered for further court action to free the child
35 from parental custody and control.

36 (d) What actions, if any, have been taken by the parent to
37 correct the problems that caused the child to be made a dependent
38 child of the court.

39 (e) If the parent or guardian is unwilling or unable to participate
40 in making an educational decision for his or her child, or if other

1 circumstances exist that compromise the ability of the parent or
2 guardian to make educational decisions for the child, the county
3 welfare department or social worker shall consider whether the
4 right of the parent or guardian to make educational decisions for
5 the child should be limited. If the supplemental report makes that
6 recommendation, the report shall identify whether there is a
7 responsible adult available to make educational decisions for the
8 child pursuant to Section 361.

9 (f) (1) Whether the child has any siblings under the court's
10 jurisdiction, and, if any siblings exist, all of the following:

11 (A) The nature of the relationship between the child and his or
12 her siblings.

13 (B) The appropriateness of developing or maintaining the
14 sibling relationships pursuant to Section 16002.

15 (C) If the siblings are not placed together in the same home,
16 why the siblings are not placed together and what efforts are being
17 made to place the siblings together, or why those efforts are not
18 appropriate.

19 (D) If the siblings are not placed together, the frequency and
20 nature of the visits between siblings.

21 (E) The impact of the sibling relationships on the child's
22 placement and planning for legal permanence.

23 (2) The factual discussion shall include a discussion of
24 indicators of the nature of the child's sibling relationships
25 including, but not limited to, whether the siblings were raised
26 together in the same home, whether the siblings have shared
27 significant common experiences or have existing close and strong
28 bonds, whether either sibling expresses a desire to visit or live with
29 his or her sibling, as applicable, and whether ongoing contact is in
30 the child's best emotional interests.

31 (g) *Relationships between the child and individuals who are*
32 *important to the child and actions taken to maintain those*
33 *relationships. The social worker or child advocate shall conduct*
34 *an investigation to identify individuals who are important to the*
35 *child, including, but not limited to, all individuals identified by the*
36 *child as important. The social worker shall ask every child who is*
37 *10 years of age or older to identify any individuals who are*
38 *important to him or her and may ask any child who is younger than*
39 *10 years of age to provide that information as appropriate.*

SEC. 6. Section 366.21 of the Welfare and Institutions Code is amended to read:

366.21. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing and of their right to be present and represented by counsel.

(b) Except as provided in Section 366.23 and subdivision (a) of Section 366.3, notice of the hearing shall be mailed by the social worker to the same persons as in the original proceeding, *including the child*, to the child's parent or legal guardian, to the foster parents, relative caregivers, community care facility, or foster family agency having physical custody of the child in the case of a child removed from the physical custody of his or her parent or legal guardian, and to the counsel of record if the counsel of record was not present at the time that the hearing was set by the court, by first-class mail addressed to the last known address of the person to be notified, or shall be personally served on those persons, not earlier than 30 days nor later than 15 days preceding the date to which the hearing was continued. Service of a copy of the notice personally or by certified mail return receipt requested, or any other form of actual notice, is equivalent to service by first-class mail.

The notice shall contain a statement regarding the nature of the hearing to be held and any change in the custody or status of the child being recommended by the supervising agency. *The notice to the child shall state that the child has the right to attend and participate in the hearing.* The notice to the foster parent, relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency shall indicate that the foster parent, relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency may attend all hearings or may submit to the court in writing any information he or she deems relevant.

1 (c) At least 10 calendar days prior to the hearing, the social
2 worker shall file a supplemental report with the court regarding the
3 services provided or offered to the parent or legal guardian to
4 enable him or her to assume custody and the efforts made to
5 achieve legal permanence for the child if efforts to reunify fail,
6 *including, but not limited to, efforts to maintain relationships*
7 *between the child and individuals who are important to the child,*
8 the progress made, and, where relevant, the prognosis for return
9 of the child to the physical custody of his or her parent or legal
10 guardian, and shall make his or her recommendation for
11 disposition. If the child is a member of a sibling group described
12 in paragraph (3) of subdivision (a) of Section 361.5, the report and
13 recommendation may also take into account those factors
14 described in subdivision (e) relating to the child's sibling group.
15 If the recommendation is not to return the child to a parent or legal
16 guardian, the report shall specify why the return of the child would
17 be detrimental to the child. The social worker shall provide the
18 parent or legal guardian and counsel for the child with a copy of
19 the report, including his or her recommendation for disposition, at
20 least 10 calendar days prior to the hearing. In the case of a child
21 removed from the physical custody of his or her parent or legal
22 guardian, the social worker shall, at least 10 calendar days prior to
23 the hearing, provide a summary of his or her recommendation for
24 disposition to any court-appointed child advocate, and any foster
25 parents, relative caregivers, certified foster parents who have been
26 approved for adoption by the State Department of Social Services
27 when it is acting as an adoption agency in counties that are not
28 served by a county adoption agency or by a licensed county
29 adoption agency, community care facility, or foster family agency
30 having the physical custody of the child.

31 (d) Prior to any hearing involving a child in the physical
32 custody of a community care facility or a foster family agency that
33 may result in the return of the child to the physical custody of his
34 or her parent or legal guardian, or in adoption or the creation of a
35 legal guardianship, the facility or agency shall file with the court
36 a report containing its recommendation for disposition. Prior to the
37 hearing involving a child in the physical custody of a foster parent,
38 a relative caregiver, or a certified foster parent who has been
39 approved for adoption by the State Department of Social Services
40 when it is acting as an adoption agency or by a licensed adoption



1 agency, the foster parent, relative caregiver, or the certified foster
2 parent who has been approved for adoption by the State
3 Department of Social Services when it is acting as an adoption
4 agency in counties that are not served by a county adoption agency
5 or by a licensed county adoption agency, may file with the court
6 a report containing his or her recommendation for disposition. The
7 court shall consider the report and recommendation filed pursuant
8 to this subdivision prior to determining any disposition.

9 (e) At the review hearing held six months after the initial
10 dispositional hearing, the court shall order the return of the child
11 to the physical custody of his or her parent or legal guardian unless
12 the court finds, by a preponderance of the evidence, that the return
13 of the child to his or her parent or legal guardian would create a
14 substantial risk of detriment to the safety, protection, or physical
15 or emotional well-being of the child. The social worker shall have
16 the burden of establishing that detriment. The failure of the parent
17 or legal guardian to participate regularly and make substantive
18 progress in court-ordered treatment programs shall be prima facie
19 evidence that return would be detrimental. In making its
20 determination, the court shall review and consider the social
21 worker's report and recommendations and the report and
22 recommendations of any child advocate appointed pursuant to
23 Section 356.5; and shall consider the efforts or progress, or both,
24 demonstrated by the parent or legal guardian and the extent to
25 which he or she availed himself or herself of services provided.

26 Whether or not the child is returned to a parent or legal guardian,
27 the court shall specify the factual basis for its conclusion that the
28 return would be detrimental or would not be detrimental. The court
29 also shall make appropriate findings pursuant to subdivision (a) of
30 Section 366; and, where relevant, shall order any additional
31 services reasonably believed to facilitate the return of the child to
32 the custody of his or her parent or legal guardian. The court shall
33 also inform the parent or legal guardian that if the child cannot be
34 returned home by the 12-month permanency hearing, a proceeding
35 pursuant to Section 366.26 may be instituted. This section does not
36 apply in a case where, pursuant to Section 361.5, the court has
37 ordered that reunification services shall not be provided.

38 If the child was under the age of three years on the date of the
39 initial removal, or is a member of a sibling group described in
40 paragraph (3) of subdivision (a) of Section 361.5, and the court

1 finds by clear and convincing evidence that the parent failed to
2 participate regularly and make substantive progress in a
3 court-ordered treatment plan, the court may schedule a hearing
4 pursuant to Section 366.26 within 120 days. If, however, the court
5 finds there is a substantial probability that the child, who was under
6 the age of three years on the date of initial removal or is a member
7 of a sibling group described in paragraph (3) of subdivision (a) of
8 Section 361.5, may be returned to his or her parent or legal
9 guardian within six months or that reasonable services have not
10 been provided, the court shall continue the case to the 12-month
11 permanency hearing.

12 For the purpose of placing and maintaining a sibling group
13 together in a permanent home, the court, in making its
14 determination to schedule a hearing pursuant to Section 366.26 for
15 some or all members of a sibling group, as described in paragraph
16 (3) of subdivision (a) of Section 361.5, shall review and consider
17 the social worker's report and recommendations. Factors the
18 report shall address, and the court shall consider, may include, but
19 need not be limited to, whether the sibling group was removed
20 from parental care as a group, the closeness and strength of the
21 sibling bond, the ages of the siblings, the appropriateness of
22 maintaining the sibling group together, the detriment to the child
23 if sibling ties are not maintained, the likelihood of finding a
24 permanent home for the sibling group, whether the sibling group
25 is currently placed together in a preadoptive home or has a
26 concurrent plan goal of legal permanency in the same home, the
27 wishes of each child whose age and physical and emotional
28 condition permits a meaningful response, and the best interest of
29 each child in the sibling group. The court shall specify the factual
30 basis for its finding that it is in the best interest of each child to
31 schedule a hearing pursuant to Section 366.26 in 120 days for some
32 or all of the members of the sibling group.

33 If the child was removed initially under subdivision (g) of
34 Section 300 and the court finds by clear and convincing evidence
35 that the whereabouts of the parent are still unknown, or the parent
36 has failed to contact and visit the child, the court may schedule a
37 hearing pursuant to Section 366.26 within 120 days. If the court
38 finds by clear and convincing evidence that the parent has been
39 convicted of a felony indicating parental unfitness, the court may
40 schedule a hearing pursuant to Section 366.26 within 120 days.



1 If the child had been placed under court supervision with a
2 previously noncustodial parent pursuant to Section 361.2, the
3 court shall determine whether supervision is still necessary. The
4 court may terminate supervision and transfer permanent custody
5 to that parent, as provided for by paragraph (1) of subdivision (b)
6 of Section 361.2.

7 In all other cases, the court shall direct that any reunification
8 services previously ordered shall continue to be offered to the
9 parent or legal guardian pursuant to the time periods set forth in
10 subdivision (a) of Section 361.5, provided that the court may
11 modify the terms and conditions of those services.

12 If the child is not returned to his or her parent or legal guardian,
13 the court shall determine whether reasonable services that were
14 designed to aid the parent or legal guardian in overcoming the
15 problems that led to the initial removal and the continued custody
16 of the child have been provided or offered to the parent or legal
17 guardian. The court shall order that those services be initiated,
18 continued, or terminated.

19 (f) The permanency hearing shall be held no later than 12
20 months after the date the child entered foster care, as that date is
21 determined pursuant to subdivision (a) of Section 361.5. At the
22 permanency hearing, the court shall determine the permanent plan
23 for the child, which shall include a determination of whether the
24 child will be returned to the child's home and, if so, when, within
25 the time limits of subdivision (a) of Section 361.5. The court shall
26 order the return of the child to the physical custody of his or her
27 parent or legal guardian unless the court finds, by a preponderance
28 of the evidence, that the return of the child to his or her parent or
29 legal guardian would create a substantial risk of detriment to the
30 safety, protection, or physical or emotional well-being of the child.
31 The social worker shall have the burden of establishing that
32 detriment. The court shall also determine whether reasonable
33 services that were designed to aid the parent or legal guardian to
34 overcome the problems that led to the initial removal and
35 continued custody of the child have been provided or offered to the
36 parent or legal guardian. For each youth 16 years of age and older,
37 the court shall also determine whether services have been made
38 available to assist him or her in making the transition from foster
39 care to independent living. The failure of the parent or legal
40 guardian to participate regularly and make substantive progress in

1 court-ordered treatment programs shall be prima facie evidence
2 that return would be detrimental. In making its determination, the
3 court shall review and consider the social worker's report and
4 recommendations and the report and recommendations of any
5 child advocate appointed pursuant to Section 356.5, shall consider
6 the efforts or progress, or both, demonstrated by the parent or legal
7 guardian and the extent to which he or she availed himself or
8 herself of services provided, and shall make appropriate findings
9 pursuant to subdivision (a) of Section 366.

10 Whether or not the child is returned to his or her parent or legal
11 guardian, the court shall specify the factual basis for its decision.
12 If the child is not returned to a parent or legal guardian, the court
13 shall specify the factual basis for its conclusion that the return
14 would be detrimental. The court also shall make a finding pursuant
15 to subdivision (a) of Section 366.

16 (g) If the time period in which the court-ordered services were
17 provided has met or exceeded the time period set forth in
18 paragraph (1), (2), or (3) of subdivision (a) of Section 361.5, as
19 appropriate, and a child is not returned to the custody of a parent
20 or legal guardian at the permanency hearing held pursuant to
21 subdivision (f), the court shall do one of the following:

22 (1) Continue the case for up to six months for a permanency
23 review hearing, provided that the hearing shall occur within 18
24 months of the date the child was originally taken from the physical
25 custody of his or her parent or legal guardian. The court shall
26 continue the case only if it finds that there is a substantial
27 probability that the child will be returned to the physical custody
28 of his or her parent or legal guardian and safely maintained in the
29 home within the extended period of time or that reasonable
30 services have not been provided to the parent or legal guardian. For
31 the purposes of this section, in order to find a substantial
32 probability that the child will be returned to the physical custody
33 of his or her parent or legal guardian and safely maintained in the
34 home within the extended period of time, the court shall be
35 required to find all of the following:

36 (A) That the parent or legal guardian has consistently and
37 regularly contacted and visited with the child.

38 (B) That the parent or legal guardian has made significant
39 progress in resolving problems that led to the child's removal from
40 the home.

1 (C) The parent or legal guardian has demonstrated the capacity
2 and ability both to complete the objectives of his or her treatment
3 plan and to provide for the child's safety, protection, physical and
4 emotional well-being, and special needs.

5 For purposes of this subdivision, the court's decision to continue
6 the case based on a finding or substantial probability that the child
7 will be returned to the physical custody of his or her parent or legal
8 guardian is a compelling reason for determining that a hearing held
9 pursuant to Section 366.26 is not in the best interests of the child.

10 The court shall inform the parent or legal guardian that if the
11 child cannot be returned home by the next permanency review
12 hearing, a proceeding pursuant to Section 366.36 may be
13 instituted. The court shall not order that a hearing pursuant to
14 Section 366.26 be held unless there is clear and convincing
15 evidence that reasonable services have been provided or offered to
16 the parent or legal guardian.

17 (2) Order that a hearing be held within 120 days, pursuant to
18 Section 366.26, but only if the court does not continue the case to
19 the permanency planning review hearing and there is clear and
20 convincing evidence that reasonable services have been provided
21 or offered to the parents or legal guardians.

22 (3) Order that the child remain in long-term foster care, but
23 only if the court finds by clear and convincing evidence, based
24 upon the evidence already presented to it, including a
25 recommendation by the State Department of Social Services when
26 it is acting as an adoption agency in counties that are not served by
27 a county adoption agency or by a licensed county adoption agency,
28 that there is a compelling reason for determining that a hearing
29 held pursuant to Section 366.26 is not in the best interest of the
30 child because the child is not a proper subject for adoption and has
31 no one willing to accept legal guardianship. For purposes of this
32 section, a recommendation by the State Department of Social
33 Services when it is acting as an adoption agency in counties that
34 are not served by a county adoption agency or by a licensed county
35 adoption agency that adoption is not in the best interest of the child
36 shall constitute a compelling reason for the court's determination.
37 That recommendation shall be based on the present circumstances
38 of the child and shall not preclude a different recommendation at
39 a later date if the child's circumstances change.

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent or legal guardian. The court shall continue to permit the parent or legal guardian to visit the child pending the hearing unless it finds that visitation would be detrimental to the child. *The court shall make any other appropriate orders to enable the child to maintain relationships with other individuals who are important to the child.*

(i) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that shall include:

(1) Current search efforts for an absent parent or parents or legal guardians.

(2) *Identification of individuals who are important to the child and actions necessary to maintain the child's relationship with those individuals. The agency shall conduct an investigation to identify individuals who are important to the child, including, but not limited to, all individuals identified by the child as important. The agency shall ask every child who is 10 years of age or older to identify any individuals who are important to him or her and may ask any child who is younger than 10 years of age to provide that information as appropriate.*

(3) A review of the amount of and nature of any contact between the child and his or her parents or legal guardians and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purpose of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

~~(3)~~

(4) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

~~(4)~~

(5) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for

1 child abuse or neglect, the capability to meet the child's needs, and
2 the understanding of the legal and financial rights and
3 responsibilities of adoption and guardianship. If a proposed
4 guardian is a relative of the minor, and the relative was assessed
5 for foster care placement of the minor prior to January 1, 1998, the
6 assessment shall also consider, but need not be limited to, all of the
7 factors specified in subdivision (a) of Section 361.3.

8 ~~(5)~~

9 (6) The relationship of the child to any identified prospective
10 adoptive parent or legal guardian, the duration and character of the
11 relationship, the motivation for seeking adoption or guardianship,
12 and a statement from the child concerning placement and the
13 adoption or guardianship, unless the child's age or physical,
14 emotional, or other condition precludes his or her meaningful
15 response, and if so, a description of the condition.

16 ~~(6)~~

17 (7) *A description of efforts to be made to identify an adoptive*
18 *family including, but not limited to, child specific recruitment and*
19 *listing on an adoption exchange.*

20 (8) An analysis of the likelihood that the child will be adopted
21 if parental rights are terminated.

22 (j) If, at any hearing held pursuant to Section 366.26, a
23 guardianship is established for the minor with a relative, and
24 juvenile court dependency is subsequently dismissed, the relative
25 shall be eligible for aid under the Kin-GAP program as provided
26 in Article 4.5 (commencing with Section 11360) of Chapter 2 of
27 Part 3 of Division 9.

28 (k) As used in this section, "relative" means an adult who is
29 related to the minor by blood, adoption, or affinity within the fifth
30 degree of kinship, including stepparents, stepsiblings, and all
31 relatives whose status is preceded by the words "great,"
32 "great-great," or "grand," or the spouse of any of those persons
33 even if the marriage was terminated by death or dissolution.

34 (l) For purposes of this section, evidence of any of the
35 following circumstances shall not, in and of itself, be deemed a
36 failure to provide or offer reasonable services:

37 (1) The child has been placed with a foster family that is
38 eligible to adopt a child, or has been placed in a preadoptive home.

39 (2) The case plan includes services to make and finalize a
40 permanent placement for the child if efforts to reunify fail.

(3) Services to make and finalize a permanent placement for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

SEC. 7. Section 366.22 of the Welfare and Institutions Code is amended to read:

366.22. (a) When a case has been continued pursuant to paragraph (1) of subdivision (g) of Section 366.21, the permanency review hearing shall occur within 18 months after the date the child was originally removed from the physical custody of his or her parent or legal guardian. The court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Whether or not the child is returned to his or her parent or legal guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that return would be detrimental.

If the child is not returned to a parent or legal guardian at the permanency review hearing, the court shall order that a hearing be held pursuant to Section 366.26 in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child. However, if the court finds by clear and convincing evidence, based on the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties

1 that are not served by a county adoption agency or by a licensed
2 county adoption agency, that there is a compelling reason, as
3 described in paragraph (2) of subdivision (g) of Section 366.21, for
4 determining that a hearing held under Section 366.26 is not in the
5 best interest of the child because the child is not a proper subject
6 for adoption and has no one willing to accept legal guardianship,
7 then the court may, only under these circumstances, order that the
8 child remain in long-term foster care. The hearing shall be held no
9 later than 120 days from the date of the permanency review
10 hearing. The court shall also order termination of reunification
11 services to the parent or legal guardian. The court shall continue
12 to permit the parent or legal guardian to visit the child unless it
13 finds that visitation would be detrimental to the child. The court
14 shall determine whether reasonable services have been offered or
15 provided to the parent or legal guardian. For purposes of this
16 subdivision, evidence of any of the following circumstances shall
17 not, in and of themselves, be deemed a failure to provide or offer
18 reasonable services:

19 (1) The child has been placed with a foster family that is
20 eligible to adopt a child, or has been placed in a preadoptive home.

21 (2) The case plan includes services to make and finalize a
22 permanent placement for the child if efforts to reunify fail.

23 (3) Services to make and finalize a permanent placement for
24 the child, if efforts to reunify fail, are provided concurrently with
25 services to reunify the family.

26 (b) Whenever a court orders that a hearing pursuant to Section
27 366.26 shall be held, it shall direct the agency supervising the child
28 and the licensed county adoption agency, or the State Department
29 of Social Services when it is acting as an adoption agency in
30 counties that are not served by a county adoption agency, to
31 prepare an assessment that shall include:

32 (1) Current search efforts for an absent parent or parents.

33 (2) A review of the amount of and nature of any contact
34 between the child and his or her parents and other members of his
35 or her extended family since the time of placement. Although the
36 extended family of each child shall be reviewed on a case-by-case
37 basis, "extended family" for the purposes of this paragraph shall
38 include, but not be limited to, the child's siblings, grandparents,
39 aunts, and uncles.

(3) *Identification of individuals who are important to the child and actions necessary to maintain the child's relationship with those individuals. The agency shall conduct an investigation to identify individuals who are important to the child, including, but not limited to, all individuals identified by the child as important. The agency shall ask every child who is 10 years of age or older to identify any individuals who are important to him or her and may ask any child who is 10 years of age to provide that information as appropriate.*

(4) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

~~(4)~~

(5) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed legal guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

~~(5)~~

(6) The relationship of the child to any identified prospective adoptive parent or legal guardian, the duration and character of the relationship, the motivation for seeking adoption or legal guardianship, and a statement from the child concerning placement and the adoption or legal guardianship, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

~~(6)~~

(7) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(c) This section shall become operative January 1, 1999. If at any hearing held pursuant to Section 366.26, a legal guardianship is established for the minor with a relative, and juvenile court dependency is subsequently dismissed, the relative shall be eligible for aid under the Kin-GAP program as provided in Article

1 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of
2 Division 9.

3 (d) As used in this section, “relative” means an adult who is
4 related to the child by blood, adoption, or affinity within the fifth
5 degree of kinship, including stepparents, stepsiblings, and all
6 relatives whose status is preceded by the words “great,”
7 “great-great,” or “grand,” or the spouse of any of those persons
8 even if the marriage was terminated by death or dissolution.

9 SEC. 8. Section 366.26 of the Welfare and Institutions Code
10 is amended to read:

11 366.26. (a) This section applies to children who are adjudged
12 dependent children of the juvenile court pursuant to subdivision
13 (c) of Section 360. The procedures specified herein are the
14 exclusive procedures for conducting these hearings; Part 2
15 (commencing with Section 3020) of Division 8 of the Family Code
16 is not applicable to these proceedings. Section 8714.7 of the
17 Family Code is applicable and available to all dependent children
18 meeting the requirements of that section, if the postadoption
19 contact agreement has been entered into voluntarily. For children
20 who are adjudged dependent children of the juvenile court
21 pursuant to subdivision (c) of Section 360, this section and
22 Sections 8604, 8605, 8606, and 8700 of the Family Code and
23 Chapter 5 (commencing with Section 7660) of Part 3 of Division
24 12 of the Family Code specify the exclusive procedures for
25 permanently terminating parental rights with regard to, or
26 establishing legal guardianship of, the child while the child is a
27 dependent child of the juvenile court.

28 (b) At the hearing, that shall be held in juvenile court for all
29 children who are dependents of the juvenile court, the court, in
30 order to provide stable, permanent homes for these children, shall
31 review the report as specified in Section 361.5, 366.21, or 366.22,
32 shall indicate that the court has read and considered it, shall receive
33 other evidence that the parties may present, and then shall make
34 findings and orders in the following order of preference:

35 (1) Terminate the rights of the parent or parents and order that
36 the child be placed for adoption and, upon the filing of a petition
37 for adoption in the juvenile court, order that a hearing be set. The
38 court shall proceed with the adoption after the appellate rights of
39 the natural parents have been exhausted.

(2) On making a finding under paragraph (3) of subdivision (c), identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days.

(3) Appoint a legal guardian for the child and order that letters of guardianship issue.

(4) Order that the child be placed in long-term foster care, subject to the periodic review of the juvenile court under Section 366.3.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) (1) If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted. A finding under subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, under subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(B) A child 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental

rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The child is living with a relative or foster parent who is unable or unwilling to adopt the child because of exceptional circumstances, that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the child. This subparagraph does not apply to any child who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one child is under six years of age and the siblings are, or should be, permanently placed together.

(E) There would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.

If the court finds that termination of parental rights would be detrimental to the child pursuant to subparagraph (A), (B), (C), (D), or (E), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if at each and every hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days. During this 180-day

1 period, the public agency responsible for seeking adoptive parents
2 for each child shall, to the extent possible, contact other private and
3 public adoption agencies regarding the availability of the child for
4 adoption. During the 180-day period, the public agency shall
5 conduct the search for adoptive parents in the same manner as
6 prescribed for children in Sections 8708 and 8709 of the Family
7 Code. At the expiration of this period, another hearing shall be held
8 and the court shall proceed pursuant to paragraph (1), (3), or (4)
9 of subdivision (b). For purposes of this section, a child may only
10 be found to be difficult to place for adoption if there is no identified
11 or available prospective adoptive parent for the child because of
12 the child's membership in a sibling group, or the presence of a
13 diagnosed medical, physical, or mental handicap, or the child is the
14 age of seven years or more.

15 (4) If the court finds that adoption of the child or termination
16 of parental rights is not in the best interest of the child, because one
17 of the conditions in subparagraph (A), (B), (C), (D) or (E) of
18 paragraph (1) or in paragraph (2) applies, the court shall either
19 order that the present caretakers or other appropriate persons shall
20 become legal guardians of the child or order that the child remain
21 in long-term foster care. Legal guardianship shall be considered
22 before long-term foster care, if it is in the best interests of the child
23 and if a suitable guardian can be found. When the child is living
24 with a relative or a foster parent who is willing and capable of
25 providing a stable and permanent environment, but not willing to
26 become a legal guardian, the child shall not be removed from the
27 home if the court finds the removal would be seriously detrimental
28 to the emotional well-being of the child because the child has
29 substantial psychological ties to the relative caretaker or foster
30 parents. The court shall also make an order for visitation with the
31 parents or guardians unless the court finds by a preponderance of
32 the evidence that the visitation would be detrimental to the
33 physical or emotional well-being of the child.

34 (5) If the court finds that the child should not be placed for
35 adoption, that legal guardianship shall not be established, and that
36 there are no suitable foster parents except exclusive-use homes
37 available to provide the child with a stable and permanent
38 environment, the court may order the care, custody, and control of
39 the child transferred from the county welfare department to a
40 licensed foster family agency. The court shall consider the written



1 recommendation of the county welfare director regarding the
2 suitability of the transfer. The transfer shall be subject to further
3 court orders.

4 The licensed foster family agency shall place the child in a
5 suitable licensed or exclusive-use home which has been certified
6 by the agency as meeting licensing standards. The licensed foster
7 family agency shall be responsible for supporting the child and for
8 providing appropriate services to the child, including those
9 services ordered by the court. Responsibility for the support of the
10 child shall not, in and of itself, create liability on the part of the
11 foster family agency to third persons injured by the child. Those
12 children whose care, custody, and control are transferred to a foster
13 family agency shall not be eligible for foster care maintenance
14 payments or child welfare services, except for emergency
15 response services pursuant to Section 16504.

16 (d) The proceeding for the appointment of a guardian for a
17 child who is a dependent of the juvenile court shall be in the
18 juvenile court. If the court finds pursuant to this section that legal
19 guardianship is the appropriate permanent plan, it shall appoint the
20 legal guardian and issue letters of guardianship. The assessment
21 prepared pursuant to subdivision (g) of Section 361.5, subdivision
22 (i) of Section 366.21, and subdivision (b) of Section 366.22 shall
23 be read and considered by the court prior to the appointment, and
24 this shall be reflected in the minutes of the court. The person
25 preparing the assessment may be called and examined by any party
26 to the proceeding.

27 (e) The proceeding for the adoption of a child who is a
28 dependent of the juvenile court shall be in the juvenile court if the
29 court finds pursuant to this section that adoption is the appropriate
30 permanent plan and the petition for adoption is filed in the juvenile
31 court. Upon the filing of a petition for adoption, the juvenile court
32 shall order that an adoption hearing be set. The court shall proceed
33 with the adoption after the appellate rights of the natural parents
34 have been exhausted. The full report required by Section 8715 of
35 the Family Code shall be read and considered by the court prior to
36 the adoption and this shall be reflected in the minutes of the court.
37 The person preparing the report may be called and examined by
38 any party to the proceeding. It is the intent of the Legislature,
39 pursuant to this subdivision, to give potential adoptive parents the
40 option of filing in the juvenile court the petition for the adoption

1 of a child who is a dependent of the juvenile court. Nothing in this
2 section is intended to prevent the filing of a petition for adoption
3 in any other court as permitted by law, instead of in the juvenile
4 court.

5 (f) At the beginning of any proceeding pursuant to this section,
6 if the child or the parents are not being represented by previously
7 retained or appointed counsel, the court shall proceed as follows:

8 (1) The court shall consider whether the interests of the child
9 require the appointment of counsel. If the court finds that the
10 interests of the child do require this protection, the court shall
11 appoint counsel to represent the child. If the court finds that the
12 interests of the child require the representation of counsel, counsel
13 shall be appointed whether or not the child is able to afford
14 counsel. The child shall not be present in court unless the child or
15 the child's counsel so requests or the court so orders.

16 (2) If a parent appears without counsel and is unable to afford
17 counsel, the court shall appoint counsel for the parent, unless this
18 representation is knowingly and intelligently waived. The same
19 counsel shall not be appointed to represent both the child and his
20 or her parent. The public defender or private counsel may be
21 appointed as counsel for the parent.

22 (3) Private counsel appointed under this section shall receive a
23 reasonable sum for compensation and expenses, the amount of
24 which shall be determined by the court. The amount shall be paid
25 by the real parties in interest, other than the child, in any
26 proportions the court deems just. However, if the court finds that
27 any of the real parties in interest are unable to afford counsel, the
28 amount shall be paid out of the general fund of the county.

29 (g) The court may continue the proceeding for not to exceed 30
30 days as necessary to appoint counsel, and to enable counsel to
31 become acquainted with the case.

32 (h) (1) At all proceedings under this section, the court shall
33 consider the wishes of the child and shall act in the best interests
34 of the child.

35 (2) *If the child is 10 years of age or older and is not present at*
36 *a hearing held pursuant to this section, the court shall determine*
37 *whether the minor was properly notified of his or her right to attend*
38 *the hearing.*

39 (3) (A) The testimony of the child may be taken in chambers
40 and outside the presence of the child's parent or parents if the

1 child's parent or parents are represented by counsel, the counsel is
2 present, and any of the following circumstances exist:

3 ~~(1)~~

4 (i) The court determines that testimony in chambers is
5 necessary to ensure truthful testimony.

6 ~~(2)~~

7 (ii) The child is likely to be intimidated by a formal courtroom
8 setting.

9 ~~(3)~~

10 (iii) The child is afraid to testify in front of his or her parent or
11 parents.

12 (B) After testimony in chambers, the parent or parents of the
13 child may elect to have the court reporter read back the testimony
14 or have the testimony summarized by counsel for the parent or
15 parents.

16 (C) The testimony of a child also may be taken in chambers and
17 outside the presence of the guardian or guardians of a child under
18 the circumstances specified in this subdivision.

19 (i) Any order of the court permanently terminating parental
20 rights under this section shall be conclusive and binding upon the
21 child, upon the parent or parents and upon all other persons who
22 have been served with citation by publication or otherwise as
23 provided in this chapter. After making the order, the court shall
24 have no power to set aside, change, or modify it, but nothing in this
25 section shall be construed to limit the right to appeal the order.

26 (j) If the court, by order or judgment declares the child free
27 from the custody and control of both parents, or one parent if the
28 other does not have custody and control, the court shall at the same
29 time order the child referred to the State Department of Social
30 Services or a licensed adoption agency for adoptive placement by
31 the agency. However, no petition for adoption may be granted until
32 the appellate rights of the natural parents have been exhausted. The
33 State Department of Social Services or licensed adoption agency
34 shall be responsible for the custody and supervision of the child
35 and shall be entitled to the exclusive care and control of the child
36 at all times until a petition for adoption is granted. With the consent
37 of the agency, the court may appoint a guardian of the child, who
38 shall serve until the child is adopted.

39 (k) Notwithstanding any other provision of law, the application
40 of any person who, as a relative caretaker or foster parent, has

1 cared for a dependent child for whom the court has approved a
2 permanent plan for adoption, or who has been freed for adoption,
3 shall be given preference with respect to that child over all other
4 applications for adoptive placement if the agency making the
5 placement determines that the child has substantial emotional ties
6 to the relative caretaker or foster parent and removal from the
7 relative caretaker or foster parent would be seriously detrimental
8 to the child's emotional well-being.

9 As used in this subdivision, "preference" means that the
10 application shall be processed and, if satisfactory, the family study
11 shall be completed before the processing of the application of any
12 other person for the adoptive placement of the child.

13 (I) (1) An order by the court that a hearing pursuant to this
14 section be held is not appealable at any time unless all of the
15 following applies:

16 (A) A petition for extraordinary writ review was filed in a
17 timely manner.

18 (B) The petition substantively addressed the specific issues to
19 be challenged and supported that challenge by an adequate record.

20 (C) The petition for extraordinary writ review was summarily
21 denied or otherwise not decided on the merits.

22 (2) Failure to file a petition for extraordinary writ review
23 within the period specified by rule, to substantively address the
24 specific issues challenged, or to support that challenge by an
25 adequate record shall preclude subsequent review by appeal of the
26 findings and orders made pursuant to this section.

27 (3) The Judicial Council shall adopt rules of court, effective
28 January 1, 1995, to ensure all of the following:

29 (A) A trial court, after issuance of an order directing a hearing
30 pursuant to this section be held, shall advise all parties of the
31 requirement of filing a petition for extraordinary writ review as set
32 forth in this subdivision in order to preserve any right to appeal in
33 these issues. This notice shall be made orally to a party if they are
34 present at the time of the making of the order or by first-class mail
35 by the clerk of the court to the last known address of a party not
36 present at the time of the making of the order.

37 (B) The prompt transmittal of the records from the trial court
38 to the appellate court.

39 (C) That adequate time requirements for counsel and court
40 personnel exist to implement the objective of this subdivision.

1 (D) That the parent or guardian, or their trial counsel or other
2 counsel, is charged with the responsibility of filing a petition for
3 extraordinary writ relief pursuant to this subdivision.

4 (4) The intent of this subdivision is to do both of the following:

5 (A) Make every reasonable attempt to achieve a substantive
6 and meritorious review by the appellate court within the time
7 specified in Sections 366.21 and 366.22 for holding a hearing
8 pursuant to this section.

9 (B) Encourage the appellate court to determine all writ
10 petitions filed pursuant to this subdivision on their merits.

11 (5) This subdivision shall only apply to cases in which an order
12 to set a hearing pursuant to this section is issued on or after January
13 1, 1995.

14 (m) Except for subdivision (j), this section shall also apply to
15 minors adjudged wards pursuant to Section 727.31.

16 SEC. 9. Section 366.3 of the Welfare and Institutions Code is
17 amended to read:

18 366.3. (a) If a juvenile court orders a permanent plan of
19 adoption or legal guardianship pursuant to Section 360 or 366.26,
20 the court shall retain jurisdiction over the child until the child is
21 adopted or the legal guardianship is established, except as
22 provided for in Section 366.29. The status of the child shall be
23 reviewed every six months to ensure that the adoption or legal
24 guardianship is completed as expeditiously as possible. When the
25 adoption of the child has been granted, the court shall terminate its
26 jurisdiction over the child. Following establishment of a legal
27 guardianship, the court may continue jurisdiction over the child as
28 a dependent child of the juvenile court or may terminate its
29 dependency jurisdiction and retain jurisdiction over the child as a
30 ward of the legal guardianship, as authorized by Section 366.4. If,
31 however, a relative of the child is appointed the legal guardian of
32 the child and the child has been placed with the relative for at least
33 12 months, the court shall, except if the relative guardian objects,
34 or upon a finding of exceptional circumstances, terminate its
35 dependency jurisdiction and retain jurisdiction over the child as a
36 ward of the guardianship, as authorized by Section 366.4. If,
37 following a termination of parental rights the parent or parents
38 shall not be a party to, or receive notice of, any subsequent
39 proceedings regarding the child.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship, or no dependency jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the child.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a legal guardianship that has been granted pursuant to Section 360 or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the child. Prior to the hearing on a petition to terminate legal guardianship pursuant to this paragraph, the court shall order the county department of social services or welfare department to prepare a report, for the court's consideration, that shall include an evaluation of whether the child could safely remain in the legal guardian's home, without terminating the legal guardianship, if services were provided to the child or legal guardian. If applicable, the report shall also identify recommended services to maintain the legal guardianship and set forth a plan for providing those services. If the petition to terminate legal guardianship is granted, the juvenile court may resume dependency jurisdiction over the child, and may order the county department of social services or welfare department to develop a new permanent plan, which shall be presented to the court within 60 days of the termination. If no dependency jurisdiction has attached, the social worker shall make any investigation he or she deems necessary to determine whether the child may be within the jurisdiction of the juvenile court, as provided in Section 328.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the legal guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the child in another permanent placement. At the hearing, the parents may be considered as custodians but the child shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the child. The court may, if it is in the best interests

1 of the child, order that reunification services again be provided to
2 the parent or parents.

3 (c) If, following the establishment of a legal guardianship, the
4 county welfare department becomes aware of changed
5 circumstances that indicate adoption may be an appropriate plan
6 for the child, the department shall so notify the court. The court
7 may vacate its previous order dismissing dependency jurisdiction
8 over the child and order that a hearing be held pursuant to Section
9 366.26 to determine whether adoption or continued legal
10 guardianship is the most appropriate plan for the child. The
11 hearing shall be held no later than 120 days from the date of the
12 order. If the court orders that a hearing shall be held pursuant to
13 Section 366.26, the court shall direct the agency supervising the
14 child and the licensed county adoption agency, or the State
15 Department of Social Services if it is acting as an adoption agency
16 in counties that are not served by a county adoption agency, to
17 prepare an assessment under subdivision (b) of Section 366.22.

18 (d) If the child is in a placement other than the home of a legal
19 guardian and jurisdiction has not been dismissed, the status of the
20 child shall be reviewed at least every six months. The review of the
21 status of a child for whom the court has ordered parental rights
22 terminated and who has been ordered placed for adoption shall be
23 conducted by the court. The review of the status of a child for
24 whom the court has not ordered parental rights terminated and who
25 has not been ordered placed for adoption may be conducted by the
26 court or an appropriate local agency. The court shall conduct the
27 review under the following circumstances:

28 (1) Upon the request of the child's parents or legal guardians.

29 (2) Upon the request of the child.

30 (3) It has been 12 months since a hearing held pursuant to
31 Section 366.26 or an order that the child remain in long-term foster
32 care pursuant to Section 366.21, 366.22, 366.26, or subdivision
33 (g).

34 (4) It has been 12 months since a review was conducted by the
35 court.

36 The court shall determine whether or not reasonable efforts to
37 make and finalize a permanent placement for the child have been
38 made.

39 (e) Except as provided in subdivision (f), at the review held
40 every six months pursuant to subdivision (d), the reviewing body

1 shall inquire about the progress being made to provide a permanent
2 home for the child, shall consider the safety of the child, and shall
3 determine all of the following:

4 (1) The continuing necessity for and appropriateness of the
5 placement.

6 (2) The continuing appropriateness and extent of compliance
7 with the permanent plan for the child, *including efforts to maintain*
8 *relationships between the child and individuals who are important*
9 *to the child and efforts to identify an adoptive family, including, but*
10 *not limited to, child specific recruitment efforts and listing on*
11 *adoption exchange.*

12 (3) The extent of the agency's compliance with the child
13 welfare services case plan in making reasonable efforts to return
14 the child to a safe home and to complete whatever steps are
15 necessary to finalize the permanent placement of the child.

16 (4) Whether there should be any limitation on the right of the
17 parent or guardian to make educational decisions for the child.
18 That limitation shall be specifically addressed in the court order
19 and may not exceed what is necessary to protect the child. If the
20 court specifically limits the right of the parent or guardian to make
21 educational decisions for the child, the court shall at the same time
22 appoint a responsible adult to make educational decisions for the
23 child pursuant to Section 361.

24 (5) The adequacy of services provided to the child. The court
25 shall consider the progress in providing the information and
26 documents to the child, as described in Section 391. The court shall
27 also consider the need for, and progress in providing, the assistance
28 and services described in paragraphs (3) and (4) of subdivision (b)
29 of Section 391.

30 (6) The extent of progress the parents or legal guardians have
31 made toward alleviating or mitigating the causes necessitating
32 placement in foster care.

33 (7) The likely date by which the child may be returned to and
34 safely maintained in the home, placed for adoption, legal
35 guardianship, or in another planned permanent living
36 arrangement.

37 (8) Whether the child has any siblings under the court's
38 jurisdiction, and, if any siblings exist, all of the following:

39 (A) The nature of the relationship between the child and his or
40 her siblings.



1 (B) The appropriateness of developing or maintaining the
2 sibling relationships pursuant to Section 16002.

3 (C) If the siblings are not placed together in the same home,
4 why the siblings are not placed together and what efforts are being
5 made to place the siblings together, or why those efforts are not
6 appropriate.

7 (D) If the siblings are not placed together, the frequency and
8 nature of the visits between siblings.

9 (E) The impact of the sibling relationships on the child's
10 placement and planning for legal permanence.

11 The factors the court may consider as indicators of the nature of
12 the child's sibling relationships include, but are not limited to,
13 whether the siblings were raised together in the same home,
14 whether the siblings have shared significant common experiences
15 or have existing close and strong bonds, whether either sibling
16 expresses a desire to visit or live with his or her sibling, as
17 applicable, and whether ongoing contact is in the child's best
18 emotional interests.

19 (9) For a child who is 16 years of age or older, the services
20 needed to assist the child to make the transition from foster care
21 to independent living.

22 The reviewing body shall determine whether or not reasonable
23 efforts to make and finalize a permanent placement for the child
24 have been made.

25 Each licensed foster family agency shall submit reports for each
26 child in its care, custody, and control to the court concerning the
27 continuing appropriateness and extent of compliance with the
28 child's permanent plan, the extent of compliance with the case
29 plan, and the type and adequacy of services provided to the child.

30 Unless their parental rights have been permanently terminated,
31 the parent or parents of the child are entitled to receive notice of,
32 and participate in, those hearings. It shall be presumed that
33 continued care is in the best interests of the child, unless the parent
34 or parents prove, by a preponderance of the evidence, that further
35 efforts at reunification are the best alternative for the child. In
36 those cases, the court may order that further reunification services
37 to return the child to a safe home environment be provided to the
38 parent or parents for a period not to exceed six months.

39 (f) At the review conducted by the court and held at least every
40 six months, regarding a child for whom the court has ordered

1 parental rights terminated and who has been ordered placed for
2 adoption, the county welfare department shall prepare and present
3 to the court a report describing the following:

4 (1) The child's present placement.

5 (2) The child's current physical, mental, emotional, and
6 educational status.

7 (3) *Identification of individuals who are important to the child*
8 *and actions necessary to maintain the child's relationship with*
9 *those individuals. The agency shall conduct an investigation to*
10 *identify individuals who are important to the child, including, but*
11 *not limited to, all individuals identified by the child as important.*
12 *The agency shall ask every child who is 10 years of age or older*
13 *to identify any individuals who are important to him or her and*
14 *may ask any child who is 10 years of age to provide that*
15 *information as appropriate.*

16 (4) Whether the child has been placed with a prospective
17 adoptive parent or parents.

18 ~~(4)~~

19 (5) Whether an adoptive placement agreement has been signed
20 and filed.

21 ~~(5)~~

22 (6) *If the child has not been placed with a prospective adoptive*
23 *parent or parents, the efforts made to identify an appropriate*
24 *adoptive family including, but not limited to, child specific*
25 *recruitment and listing on an adoption exchange.*

26 (7) Whether the final adoption order should include provisions
27 for postadoptive sibling contact pursuant to Section 366.29.

28 ~~(6)~~

29 (8) The progress of the search for an adoptive placement if one
30 has not been identified.

31 ~~(7)~~

32 (9) Any impediments to the adoption or the adoptive
33 placement.

34 ~~(8)~~

35 (10) The anticipated date by which the child will be adopted,
36 or placed in an adoptive home.

37 ~~(9)~~

38 (11) The anticipated date by which an adoptive placement
39 agreement will be signed.

40 ~~(10)~~

1 (12) Recommendations for court orders that will assist in the
2 placement of the child for adoption or in the finalization of the
3 adoption.

4 The court shall determine whether or not reasonable efforts to
5 make and finalize a permanent placement for the child have been
6 made.

7 The court shall make appropriate orders to protect the stability
8 of the child and to facilitate and expedite the permanent placement
9 and adoption of the child.

10 (g) At the review held pursuant to subdivision (d) for a child in
11 long-term foster care, the court shall consider all permanency
12 planning options for the child including whether the child should
13 be returned to the home of the parent, placed for adoption, or
14 appointed a legal guardian, ~~or whether the child should remain in~~
15 ~~long-term foster care.~~ The court shall order that a hearing be held
16 pursuant to Section 366.26 unless it determines by clear and
17 convincing evidence, that there is a compelling reason for
18 determining that a hearing held pursuant to Section 366.26 is not
19 in the best interest of the child because the child is being returned
20 to the home of the parent, the child is not a proper subject for
21 adoption, or no one is willing to accept legal guardianship. If the
22 licensed county adoption agency, or the department when it is
23 acting as an adoption agency in counties that are not served by a
24 county adoption agency, has determined it is unlikely that the child
25 will be adopted or one of the conditions described in paragraph (1)
26 of subdivision (c) of Section 366.26 applies, that fact shall
27 constitute a compelling reason for purposes of this subdivision.
28 Only upon that determination may the court order that the child
29 remain in long-term foster care, without holding a hearing
30 pursuant to Section 366.26.

31 (h) If, as authorized by subdivision (g), the court orders a
32 hearing pursuant to Section 366.26, the court shall direct the
33 agency supervising the child and the licensed county adoption
34 agency, or the State Department of Social Services when it is
35 acting as an adoption agency in counties that are not served by a
36 county adoption agency, to prepare an assessment as provided for
37 in subdivision (i) of Section 366.21 or subdivision (b) of Section
38 366.22. A hearing held pursuant to Section 366.26 shall be held no
39 later than 120 days from the date of the 12-month review at which
40 it is ordered, and at that hearing the court shall determine whether

1 adoption, legal guardianship, or long-term foster care is the most
2 appropriate plan for the child.

3 SEC. 10. Section 16500.1 of the Welfare and Institutions
4 Code is amended to read:

5 16500.1. (a) It is the intent of the Legislature to use the
6 strengths of families and communities to serve the needs of
7 children who are alleged to be abused or neglected, as described
8 in Section 300, to reduce the necessity for removing these children
9 from their home, to encourage speedy reunification of families
10 when it can be safely accomplished, to locate permanent homes
11 and families for children who cannot return to their biological
12 families, to reduce the number of placements experienced by these
13 children, to ensure that children leaving the foster care system have
14 support within their communities, to improve the quality and
15 homelike nature of out-of-home care, and to foster the educational
16 progress of children in out-of-home care.

17 (b) In order to achieve the goals specified in subdivision (a), the
18 state shall encourage the development of approaches to child
19 protection that do all of the following:

20 (1) Allow children to remain in their own schools, in close
21 proximity to their families.

22 (2) Increase the number and quality of foster families available
23 to serve these children.

24 (3) Use a team approach to foster care that permits the
25 biological and foster family to be part of that team.

26 (4) Use team decisionmaking in case planning.

27 (5) Provide support to foster children and foster families.

28 (6) Ensure that licensing requirements do not create barriers to
29 recruitment of qualified, high quality foster homes.

30 (7) Provide training for foster parents and professional staff on
31 working effectively with families and communities.

32 (8) Encourage foster parents to serve as mentors and role
33 models for biological parents.

34 (9) Use community resources, including community-based
35 agencies and volunteer organizations, to assist in developing
36 placements for children and to provide support for children and
37 their families.

38 (10) Ensure an appropriate array of placement resources for
39 children in need of out-of-home care.



1 (11) *Ensure that no child leaves foster care without a life-long*
2 *connection to a committed adult.*

3 (c) In carrying out the requirements of subdivision (b), the
4 department shall do all of the following:

5 (1) Consider the existing array of program models provided in
6 statute and in practice, including, but not limited to, wraparound
7 services, as defined in Section 18251, children's systems of care,
8 as provided for in Section 5852, the Oregon Family Unity or Santa
9 Clara County Family Conference models, which include family
10 conferences at key points in the casework process, such as when
11 out-of-home placement or return home are considered, and the
12 Annie E. Casey Foundation Family to Family initiative, which
13 uses team decisionmaking in case planning, community-based
14 placement practices requiring that children be placed in foster care
15 in the communities where they resided prior to placement, and
16 involve foster families as team members in family reunification
17 efforts.

18 (2) Ensure that emergency response services, family
19 maintenance services, family reunification services, and
20 permanent placement services are coordinated with the
21 implementation of the models described in paragraph (1).

22 (3) Ensure consistency between child welfare services program
23 regulations and the program models described in paragraph (1).

24 (d) The department, in conjunction with stakeholders,
25 including, but not limited to, county child welfare services
26 agencies, foster parent and group home associations, the
27 California Youth Connection, and other child advocacy groups,
28 shall review the existing child welfare services program
29 regulations to ensure that these regulations are consistent with the
30 legislative intent specified in subdivision (a). This review shall
31 also determine how to incorporate the best practice guidelines for
32 assessment of children and families receiving child welfare and
33 foster care services, as required by Section 16501.2.

34 (e) The department shall report to the Legislature on the results
35 of the actions taken under this section on or before January 1, 2002.

36 SEC. 11. Section 16508 of the Welfare and Institutions Code
37 is amended to read:

38 16508. (a) Permanent placement services shall be provided
39 or arranged for by county welfare department staff for children
40 who cannot safely live with their parents and are not likely to

1 return to their own homes. Permanent placement services shall be
2 available without regard to income to the following children:

3 ~~(a)~~

4 (1) Children judged dependent under Section 300 where a
5 review has determined that reunification, adoption, or
6 guardianship is inappropriate.

7 ~~(b)~~

8 (2) Recipients of public assistance under nonfederally funded
9 Aid to Families with Dependent Children programs who are wards
10 of a legal guardian where a review has determined that
11 reunification or adoption is inappropriate.

12 *(b) The social worker shall include in every case plan for*
13 *permanent placement services a discussion of individuals who are*
14 *important to the child and a plan for maintaining the child's*
15 *relationship with those individuals. The social worker shall*
16 *conduct an investigation to identify individuals who are important*
17 *to the child, including, but not limited to, all individuals who are*
18 *identified by the child as important. The social worker shall ask*
19 *every child who is 10 years of age or older to identify any*
20 *individuals who are important to him or her and may ask any child*
21 *who is younger than 10 years of age to provide that information as*
22 *appropriate.*

23 SEC. 12. Notwithstanding Section 17610 of the Government
24 Code, if the Commission on State Mandates determines that this
25 act contains costs mandated by the state, reimbursement to local
26 agencies and school districts for those costs shall be made pursuant
27 to Part 7 (commencing with Section 17500) of Division 4 of Title
28 2 of the Government Code. If the statewide cost of the claim for
29 reimbursement does not exceed one million dollars (\$1,000,000),
30 reimbursement shall be made from the State Mandates Claims
31 Fund.